IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 33059 of 2003(I)

PETITIONER:

ANNAMMA KUNCHANDY, W/O. T. KUNCHANDY VYDYAN, THOPPIL VADAKKATHIL, PADINJATTAKKAR P.O., THEVALAKKARA, KARUNAGAPPALLY TALUK, KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:
----

1. THE COMMANDING OFFICER, 89 ROAD, CONSTRUCTION COMPANY, GRF C/O. 99 APO.

2. OFFICER-IN-CHARGE, GREF RECORDS, DIGHI CAMP, PUNE-15.

3. UNION OF INDIA REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF PENSIONERS WELFARE, 3RD FLOOR, LOK NAIK BHAVAN, KHAN MARKET, NEW DELHI-3.

4. PRINCIPAL CONTROLLER OF DEFENSE ACCOUNTS (PENSION) ALLAHABAD.

ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 33059/2003 I

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE CERTIFICATE DT. 27/09/2001 BY THE TAHSILDAR, KARUNAGAPPALLY.

EXT.P2. COPY OF THE CERTIFICATE DT. 26/09/2001 BY THE VILLAGE OFFICER, THEVELAKKARA.

EXT.P3. COPY OF THE LETTER DT. 29/09/00 BY SMT. JESSY THOAS TO THE COMMANDER GREF CENTRE, DIGHI CAMP, PUNE-15.

EXT.P4. COPY OF THE LETTER DT. 17/5/2001 FORWARDING THE APPLICATION TO CONTROLLER OF DEFENCE ACCOUNTS (PENSION) ALLAHABAD.

EXT.P5. COPY OF THE LETTER DT. 19/2/2002 BY THE R4.

EXT.P6. COPY OF THE LETTER DT. 27/3/2002 BY THE R1.

EXT.P7. COPY OF THE OM NO. 45/51/97-P&PW(E) DT. 21/07/99.

True copy

tga

Thottathil B. Radhakrishnan, J.

==========

W.P.(C)No.33059 of 2003-I

==========

Dated this the 5th day of July, 2007.

JUDGMENT

Petitioner's son died while in service on 21-6-1998. By O.M. dated 1-1-1998, Government of India made provisions whereby, parents of deceased Government employees became eligible for family pension. Petitioner's son had left behind his widow. She was accordingly found eligible and granted pension. She subsequently re-married and relinquished her right to family pension on 29-9-2000. The widow's application for transferring the family pension to the parents of the deceased was rejected. By Ext.P5, the petitioner's application was rejected by saying that since the widow is alive, the dependent parents cannot be granted family pension. But the fact remains that the widow has re-married and she had relinquished her claim for pension. This is evidenced by Ext.P3.

2. The Apex Court in **S.K.Mastan Bee v. The General Manager, South Central Railway (JT 2002 (10) SC**

50) laid down that the view that once family pension is granted to one of the relatives, other eligible members cannot claim family pension even if the former subsequently becomes ineligible to receive family pension, is too technical, unreasonable and goes against the spirit of the Regulations which arose for consideration in that case. It was held by the Apex Court that the denial of pension to a deserving person amounts to violation of the fundamental right to life guaranteed under Article 21 of the Constitution of India. Following that decision, it has been laid down by this Court in **Kunhami v. Union of India (2006(2) KLT 661)** that the mere fact that family pension was sanctioned to the primarily eligible person before the date of disqualification cannot be good ground to deny grant of pension to another eligible person even after the former dies or incurs disqualification subsequently. This decision was rendered under the Pension Regulations of the Army. I am in complete agreement with the ratio of the decision, which applies to the facts of the case in hand.

In the result, this writ petition is allowed quashing Exts.P5 and P6 and declaring that the parents of the deceased Thomas Vydyan T.K., who died on 21-6-1998 while serving under the 89 Road Construction Company of the GREF, are entitled to family pension. It is further directed that all arrears due on this account from the date of Ext.P3 shall be released to the petitioner, excluding any portion of such amount, if any released to Mrs.Jessy Yohannan. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

==========

W.P.(C)No.33059 of 2003-I

==========

JUDGMENT

Dated:5-7-2007